

Cite as Det. No. 05-0075, 24 WTD 464 (2005)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 05-0075 . . .
...)	
)	Registration No. . . .
)	Doc. No. . . . /Audit No. . . .
)	Docket No. . . .
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RULE 178; RCW 82.12.02595(2): USE TAX -- EXEMPTION FOR DONATED ITEMS. Printing charges for coupons used to track and quantify a subsequent donation to a non-profit organization were properly subject to retail sales tax. The use tax exemption for donated items does not provide a basis for refund of retail sales tax properly paid when purchasing items.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

Kreger, A.L.J. – A business owning . . . restaurants in Washington and [State A asserts it improperly paid retail sales tax] on coupons printed and delivered in Washington. We find that retail sales tax was properly [paid] on the printing charges at issue and . . . the fact that the coupons were used to determine the amount of a monetary donation to non-profit organizations . . . [does not] support an exemption from retail sales tax.¹

ISSUES

1. When a business has discount coupons printed that entitle the bearer to a discount on a qualifying purchase and state that the business will make a \$1 donation to a youth sports team, does the use tax exemption under RCW 82.12.02595(2) for donated items support a refund of retail sales tax paid on the printing charges?
2. . . .

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

FINDINGS OF FACT

. . . (Taxpayer) is a [State A] corporation engaged in the business of operating . . . restaurants in both Washington and [State A]. The Taxpayer maintains its main corporate office in . . . , Washington.

In June of 2002 the Audit Division of the Department of Revenue selected the Taxpayer for a limited scope use tax/deferred sales tax audit, and reviewed the Taxpayer's business records for the period of January 1, 1999 through March 31, 2002. The audit was completed in March of 2003 and resulted in the assessment of use tax on capital assets and consumables purchased for various locations. On May 15, 2003, [an assessment of] \$. . . in use tax and interest was issued to the Taxpayer. The Taxpayer did not dispute the assessment of use tax on these items and subsequently remitted payment for the tax and interest due.

However, during the course of the audit the Taxpayer asserted that it had improperly paid retail sales tax on coupons printed and delivered to it in Washington. The Taxpayer asserted that it should receive a credit for retail sales tax paid on the coupons because the Taxpayer donated them to local little league teams The Audit Division determined that retail sales tax was properly paid on the printing charges and declined to grant a credit. The Taxpayer filed this appeal, contesting the conclusion that retail sales tax was due on the coupons.

The Taxpayer supports and sponsors a number of little league teams in the areas where it operates restaurants. One way of assisting the teams is through contributions tied to the redemption of coupons. The Taxpayer has coupons printed that are distributed to the teams. The coupons entitle the bearer to a discount on a specific qualifying purchase, state that one dollar "will be donated to the organization," and provide a space for the team name and division. The coupons bear the Taxpayer's business logo and list a number of qualifying restaurants where the coupons can be redeemed. While the little leagues are the most consistent and frequent recipient of the coupons, the Taxpayer also makes similar coupons available to local school groups and youth organizations. For each group, a starting order of . . . coupons is printed, but additional coupons can be requested by the group.

The coupons are given to the teams/groups who distribute them to their organizations and the public. As coupons are redeemed, each restaurant keeps the coupons it receives. Each restaurant then reports to the main office the total number of coupons redeemed. The main office uses this detail to calculate the donation for each team or organization. The Taxpayer says that the average donation from the redemptions for a particular team or group is \$. . .

The Taxpayer's support of the little leagues and other community groups is undertaken as a general civic responsibility and community outreach effort that also serves to foster and maintain good will toward the business. However, the Taxpayer stated that coupons also serve an advertising function for the business.

The Taxpayer has the coupons . . . printed by a [Washington] printer. During the audit period the Taxpayer picked up the coupons at the printer's [Washington] office and then arranged for the distribution of the coupons to the individual groups.

ANALYSIS

1. Donation to non-profit:

The use tax complements the retail sales tax by imposing a tax equal to the sales tax on an item of tangible personal property used in this state in cases where the retail sales tax was not paid. RCW 82.12.020; WAC 458-20-178 (Rule 178).² The nonpayment of retail sales tax is thus a necessary element of having a first use of the property in Washington that triggers the imposition of use tax. If a taxable use is established, the next question is whether there is an applicable use tax exemption.

The Taxpayer asserts that the cost of printing the coupons fits within the scope of the use tax exemption under RCW 82.12.02595(2)³ for donated items, and so contends that this exemption should support a refund of the retail sales tax paid when the coupons were purchased from the printer. This position presents two problems. First, it applies a use tax exemption to support a refund of retail sales tax and, second, that it characterizes the Taxpayer's payment of retail printing charges as a donated item.

There are many parallel exemptions from both use tax and retail sales tax,⁴ but the use exemption for donated items under RCW 82.12.02595(2) does not have a parallel retail sales tax exemption. In this case, the tax at issue is the retail sales tax imposed and collected on the purchase of the coupons from the printer. RCW Ch. 82.08 does not contain an exemption from retail sales tax for purchases that are subsequently donated to a non-profit organization. Had the legislature wished to provide a retail sales tax exemption for the purchase of items to be donated it could have done so. Where a statute specifically designates the things upon which it operates, there is an inference that the legislature intended all omissions. *Landmark Development, Inc. v. City of Roy*, 138 Wn.2d 561, 571, 980 P.2d 1234 (1999).⁵ Thus, the omission of a parallel retail sales

² However, while complementary the taxes are triggered by different events. Retail sales tax is triggered by a sale at retail as defined by RCW 82.04.050 and use tax is imposed on the first use as a consumer in this state, RCW 82.12.020.

³ RCW 82.12.02595(2) provides that the use tax does not apply to "the donation of tangible personal property without intervening use to a nonprofit charitable organization, or to the incorporation of tangible personal property without intervening use into real or personal property of or for a nonprofit charitable organization in the course of installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating the real or personal property for no charge."

⁴ For example, RCW 82.08.0281 and RCW 82.12.0275 provide parallel retail sales tax and use tax exemptions for prescription drugs. Another example of parallel exemptions is provided by RCW 82.08.02565 [and RCW 82.12.02565], which exempts machinery and equipment used directly in a manufacturing operation from both retail sales tax and use tax.

⁵ "Legislative inclusion of certain items in a category implies that other items in that category are intended to be excluded." *Bour v. Johnson*, 122 Wn.2d 829, 836, 864 P.2d 380 (1993). "Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things

tax exemption for donated items is deemed to be intentional, resulting in the purchase of items for donation being subject to retail sales tax.⁶

Anyone claiming a benefit or deduction from a taxable category has the burden of showing that he qualifies for it. *Group Health Coop. of Puget Sound, Inc. v. State Tax Comm'n*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967); Det. No. 00-099, 20 WTD 53 (2000). In general, "[t]axation is the rule and exemption is the exception." *Budget Rent-A-Car v. Department of Rev.*, 81 Wn.2d 171, 174, 500 P.2d 764 (1972). Thus, the taxpayer has the burden of establishing eligibility for an exemption. *In re Sehome Park Care Center, Inc.*, 127 Wn.2d 774, 778, 903 P.2d 443 (1995). And we construe tax exemptions narrowly. *Budget Rent-A-Car*, 81 Wn.2d at 174. In this case the tax at issue is retail sales tax that was paid when the coupons were purchased from the printer. There is no applicable exemption from retail sales tax for this purchase, and so there is no basis to support a refund of retail sales tax.

The second difficulty with the Taxpayer's argument is that it requires the Taxpayer's retail purchase to be characterized as the donation of an item to the nonprofit. The Taxpayer contends that the coupons are donated to the non-profit little leagues and school groups. The number of coupons redeemed at the Taxpayer's restaurants determines the value of the matching donation that Taxpayer makes to the respective organization. What is being donated is the money, not the coupons. . . .

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 31st day of March 2005.

omitted from it were intentionally omitted by the legislature under the maxim *expressio unius est exclusio alterius* - specific inclusions exclude implication." *Washington Natural Gas Co. v. Public Util. Dist. No. 1*, 77 Wn.2d 94, 98, 459 P.2d 633 (1969).

⁶ All sales of tangible personal property to consumers in the state of Washington are subject to retail sales tax unless there is a specific exemption. RCW 82.08.020, 82.04.050.